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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY LEE HUNTER,

Defendant and Appellant.

2d Crim. No. B208586  
(Super. Ct. No. 2006044943)  
(Ventura County)

Jimmy Lee Hunter appeals the judgment entered after a jury convicted him on two counts of first degree murder with personal use of a firearm (Pen. Code,<sup>1</sup> §§ 187, subd. (a), 12022.53, subds. (b), (c) & (d), 12022.5, subd. (a)). The jury also found true allegations that one of the murders was committed for financial gain (§ 190.2, subd. (a)(1)), that the other was committed during a robbery (§§ 190.2, subd. (a)(17), 211), and that appellant committed multiple murders (§ 190.2, subd. (a)(3)). The trial court sentenced him to consecutive terms of life without the possibility of parole plus 25 years to life.

Appellant filed a timely notice of appeal, and we appointed counsel to represent him. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, setting forth the facts of the case and requesting that we review the entire

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

record. Appellant thereafter filed a supplemental brief in which he identifies six issues for appeal. We agree with counsel's conclusion that there are no arguable issues. Accordingly, we affirm.

## STATEMENT OF FACTS

### I.

#### *The Murder of Olee Evans*

On the morning of April 18, 2005, Olee Evans and Willie Chester were working together on a handyman job in Ventura. When they arrived at about 11:00 a.m., Willie<sup>2</sup> discovered that Evans was carrying \$1,700 in cash. At about 1:30 p.m., Evans received a call on his cell phone. When he hung up, he said he had to go to Oxnard and would be right back. Evans never returned.

That afternoon, Evans' dead body was discovered in the driver's seat of his van on Bernadette Street in Oxnard. He had died from two gunshot wounds to the head. One of the bullets had entered his head through the back of his right ear, while the other entered through the left temporal area. Three expended .38-caliber shell casings were found inside the van. There was no money in Evans' wallet or pockets, and no money was found inside the van.

### II.

#### *The Murder of Davaun Washington*

In November 2005, Davaun Washington, an associate of the Westside Gangster Crips and a known drug dealer, was living in a house in Oxnard that was leased to Darrell "Poppy" Phillips. Washington arranged a meeting to buy drugs from Westside Gangster Crips "shot-caller" Theron Jackson that he intended to resell. Washington's friend, Halbert Atkins Jr., was also present at the meeting, which took place in front of Washington's house. Washington had told Atkins that Jackson had "shorted him" drugs on previous occasions.

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<sup>2</sup> Because the opinion refers to three family members who share the surname Chester, we shall refer to each of them by their first names. We intend no disrespect.

When Jackson arrived, Washington took the drugs from him, brandished a handgun and said, "We're even." Jackson went to his car and pointed a gun at Washington as he drove by. Jackson drove away after Washington produced his gun again. Later that day or the next night, Washington and Jackson purportedly settled the dispute by engaging in a fist fight in front of Washington's house.

About a week later, on November 27, 2005, Atkins tried to call Washington but was unable to reach him. Shortly after 12:00 p.m., Atkins went to Washington's house. After Atkins knocked the door and no one answered, he entered the house through the unlocked door. Atkins found Washington's dead body and blood on the floor in the hallway. Atkins was going to leave, but stayed and called 911 after one of Washington's roommates came home.

Washington suffered three gunshot wounds to the head, one to the back, one to the chest, and one to the left forearm. All of the shots were fired from a .380-caliber automatic handgun, which was consistent with the spent bullets and casings recovered from the crime scene. The medical examiner determined that each shot to the head would have been fatal by itself.

### III.

#### *Appellant's Admissions*

On June 27, 2005, Holly Hill was interviewed by Oxnard Police Detectives Bob Coughlin and Terry Burr. A tape recording of the interview was played for the jury. Hill told the detectives that appellant, her ex-boyfriend, had called her the day Evans was murdered. Appellant's cousin, Sammy Chester, was also on the line with appellant. Detective Coughlin, who had supervised the Oxnard Police Gang Unit, knew that appellant and Sammy were associates of the Westside Gangster Crips. According to Hill, appellant asked her to say he had been with her that day between 8:00 a.m. and 12:00 p.m. Hill told appellant she would only agree to do it if he told her why he needed an alibi. Appellant told her that he was in a vehicle with a man who was buying guns from Sammy. When the man told them he did not have enough money to buy all of the guns, Sammy offered to give him only two of them. Appellant, who was sitting in the back

seat, told the man that he would not get anything unless he had all the money. When appellant said he would "handle" the man right then, the man said, "well, handle me then." Appellant fired two shots at the man, then got out of the vehicle with Sammy and ran away. Hill told appellant that she would not provide him with an alibi. Hill did not believe appellant or Sammy were telling the truth until she saw a newspaper article about Evans' murder.

Jennifer Anderson was appellant's girlfriend and the mother of his infant son. Around December 7, 2005, appellant told Anderson that he had committed two murders. Appellant said that he shot a man twice in the head while appellant and Sammy were in the man's van trying to get guns from him. Appellant told Anderson that the second murder took place at "Poppy's" house, and he identified Washington as the victim. Appellant said that he shot Washington several times because he expected Jackson to pay him for doing so.

On January 5, 2006, Anderson and appellant were living with Anderson's cousin in Las Vegas. Anderson became suspicious when appellant started talking about leaving the country. When appellant left the room, Anderson found email messages on the computer that led her to believe appellant was cheating on her. She also discovered an email asking if appellant had gotten rid of the .380. Anderson became angry and told appellant to leave. Appellant came back to get his duffel bag and said, "I'm not leaving without that fucking bag." Anderson would not let appellant have the bag, so he left without it. After Anderson went through the bag and found a .380-caliber handgun, she called the police.

An officer from the Las Vegas Metro Police Department arrived and interviewed Anderson. A tape recording of that interview was played for the jury. During the interview, Anderson turned over the gun she found in appellant's duffel bag and said, "Here's the gun that Jimmy told me he killed Davaun with."<sup>3</sup> Anderson also said appellant had told her that he shot a man twice in the head about a year earlier in

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<sup>3</sup> At the preliminary hearing, Anderson testified that she had simply made up a story about the gun because she wanted to get back at him for cheating on her.

Oxnard. Appellant was sitting in the back seat right behind the victim, who was sitting in the front passenger seat. Sammy was somewhere outside, and appellant was talking to him on a cell phone. Appellant shot the man once in the back of the head, but he did not die. Appellant got out of the vehicle and threw up. When he told Sammy the man was still alive, Sammy told him, "he's gonna snitch us out, he's gonna tell on us, you've gotta finish him off." Appellant returned to the vehicle and shot the man again, then cleaned off his fingerprints and left. In recounting Washington's murder, appellant said that Jackson had paid him to do it after Washington robbed him.

At the time of trial, Bakari Pitts had known appellant for at least nine years. Pitts had been in custody in the Ventura County jail on a pending murder charge since his arrest on May 15, 2006. Appellant was housed in an adjoining cell. In exchange for a reduced sentence, Pitts agreed to engage appellant in conversations about the murders that were surreptitiously recorded. Portions of those recordings were played for the jury. In one conversation, appellant told Pitts that he shot Evans in the back of the head while appellant was sitting in the back seat of Evans' van. He then shot Evans to the front of the head to make sure he was dead. Appellant also said he took the money from Evans' pocket. Appellant told Pitts he shot Washington seven times with a .380 and wore a glove so there would be no fingerprints. He also asked Pitts to introduce him to the man who hires hit men so he could make more money.

#### IV.

##### *Weapon and Ballistics Evidence*

On May 2, 2005, Marvin Jones was stopped for speeding by an Oxnard police officer. Based on prior contacts, the officer knew that Jones and his passenger, Tyrone Bouchard, were both members of the Westside Gangster Crips. During the stop, a loaded .38-caliber revolver was recovered from Jones's pocket. The grip of the gun was wrapped in duct tape, and the serial number was rubbed off. An Oxnard Police Department criminalist who specializes in ballistics subsequently determined that the expended bullets found in Evans' van were fired from the gun. The criminalist also

determined that the .380-caliber automatic pistol found in appellant's duffel bag was the weapon used to kill Washington.

V.

*Appellant's Defense*

William Wills identified appellant as a friend. Although Wills was in jail at the time of trial, he was living with Washington a month or so prior to his death. During that time, Wills had heard Washington state that he was going to kill appellant if he ever saw him. Wills acknowledged, however, that he did not convey this information to the detectives who interviewed him in December 2005.

In April 2005, Juan Antonio Silva DeLara and Joshua Lee Howard were working as roofers near Gonzales Road in Oxnard. DeLara testified that one afternoon at about 5:00 p.m. he saw a man with a light complexion walk by a parked blue van.<sup>4</sup> Howard testified that he had seen two men sitting in a van, and recalled that the man in the front seat was wearing a gray hooded sweatshirt. Howard was unable to identify either man from a photographic lineup that included appellant.

One afternoon in April 2005, Sharon Love was sitting in front of her home near Gonzales Road when she saw two Hispanic men pull up on Sophia Drive in a red truck. After the driver handed the passenger something, the passenger got out and hurried toward the corner. Love also saw a blue van. About three minutes later, she heard a gunshot.

Margaret Sue McLucas testified that appellant was hit by a car when he was six years old and was later diagnosed with bipolar disorder and a learning disability. He was in special education throughout elementary school and attended a special education continuation school after the eighth grade. Appellant also suffered from minimal seizures. He was also subjected to verbal and physical abuse by the various men McLucas had lived with during his childhood. When he was 15, he tried to commit suicide by taking pills.

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<sup>4</sup> Appellant's father is African-American and his mother is Caucasian.

Appellant testified on his own behalf. He denied being a gang member, but admitted that he was friends with members of the Westside Gangster Crips and its affiliate, the Black Mafia Gangsters. He also acknowledged that he knew Evans through a conversation, although he denied shooting him or being present when he was killed. Appellant had heard Sammy talking on the speaker phone to some unknown man who admitted killing Evans. Appellant assumed the man was Mexican because he referred to using a "cuete," the Spanish slang term for gun. He also heard Sammy tell the man, "Bring me the .380." Sammy had given the man the gun because "he wanted that dude to rob the person, 'cause the person wanted to get some guns. And I guess the dude did what he did."

Appellant testified that he was simply recounting the conversation he had heard on the speaker phone when he told Pitts and Anderson about the Evans' murder. If he told Pitts or Anderson that he killed Evans, it was only because he wanted to impress them and gain respect. In any event, Anderson cannot be believed because she is "a habitual liar." He denied calling Hill after Evans' murder. He did not have her cell phone number, and had not talked to her since he was 14 years old.

Appellant admitted shooting Washington, but claimed self-defense. When appellant went to Washington's house to buy marijuana, Washington pulled a gun on him and demanded all of his money. Appellant struggled with Washington and took the gun from him. He stepped back and fired at Washington, but missed. When Washington charged at appellant, he shot him in the chest. Washington continued trying to get the gun back, so appellant fired several more shots at him and ran out of the house. Appellant buried the gun in his backyard, then dug it up and put it in a duffel bag. He lied to Pitts about killing Washington for money because Pitts told him he had been paid to kill the person he was charged with murdering. He also lied when he told Pitts he had gotten \$4,000 for shooting Evans and had pulled money out of his pocket.

Dr. James Shaw testified as an expert on appellant's behalf. Based on his review of five volumes of documentation concerning appellant's learning disability and behavioral problems, Dr. Shaw opined that it was doubtful whether appellant could

"make an independent determination of . . . what is right, what is wrong, that kind of thing." Appellant has a well-established learning disability and a low IQ, and appears to have suffered traumatic brain injury as a result of being hit by a car when he was six years old. At least one school had classified him as mentally retarded. Due to his limited cognitive ability and lack of maturity, he was likely to lie in order to impress others.

## DISCUSSION

In his supplemental brief, appellant contends (1) he should have been found incompetent to stand trial based on his state of mind at the time the crimes were committed; (2) his mental capacity was insufficiently evaluated; (3) his trial attorney provided ineffective assistance; (4) his *Miranda*<sup>5</sup> rights were violated; (5) Anderson's testimony at the preliminary hearing conflicted with her trial testimony; and (6) the court erred in denying his motion to sever. None of these claims qualify as arguable issues on appeal.

Appellant's first claim fails on its face because the determination whether a defendant is competent to stand trial is based on his or her mental state at the time of trial, not the time when the charged crimes were committed. (§ 1367, subd. (a).) To the extent appellant contends his trial attorney failed to adequately explore whether he lacked the mental capacity to commit the charged crimes by reason of a mental disorder or defect, the contention fails because no such defense exists. (§ 28, subd. (a).) Moreover, the record reflects that counsel vigorously pursued the defense that appellant's mental issues prevented him from forming the requisite intent to commit the crimes with which he was charged. (*Ibid.*; see also *People v. Wright* (2005) 35 Cal.4th 964, 978.)

Appellant argues that his trial attorney provided ineffective assistance by failing to investigate and present other evidence and witnesses. To establish such a claim, appellant must show both deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) Neither showing is made. Appellant does not

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<sup>5</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.



identify any evidence or witnesses he believes should have been presented, and the record does not otherwise disclose any failure to investigate.

With regard to appellant's *Miranda* claim, no such claim was raised below. The record is also devoid of any indication that appellant's *Miranda* rights were ever violated. His complaint that Anderson gave conflicting testimony is unavailing because her credibility was an issue to be decided by the jury. Appellant's contention that the court erred in denying his motion to sever necessarily fails because he cannot show a reasonable probability that he would have achieved a more favorable result had the motion been granted. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Pinholster* (1992) 1 Cal.4th 865, 932-933.)

Having examined the entire record, counsel's *Wende* brief, and appellant's supplemental brief, we conclude that counsel has fully complied with her duties and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d 436.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Edward F. Brodie, Judge  
Superior Court County of Ventura

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Madeline McDowell, under appointment by the Court of Appeal; Jimmy  
Hunter, in pro. per., for Appellant.

No appearance for Respondent.